

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 393

Introduced by Senator Ortiz

February 17, 2005

An act to amend Section 26909 of, to add Section 26909.5 to, and to add Chapter 7.5 (commencing with Section 60210) to Division 1 of Title 6 of, the Government Code, relating to special districts, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 393, as amended, Ortiz. Special districts.

(1) Existing law requires the county auditor to either make or contract for an annual audit of the accounts and records of every special purpose district within the county for which an audit is not otherwise provided.

This bill would require these audits to be performed in accordance with government auditing standards for financial and compliance audits and would impose various other requirements on these audits, thus imposing a state-mandated local program. The bill would require the Controller to review the audits under specified procedures ~~and would make an annual appropriation to the Controller from the General Fund of up to \$600,000 for that purpose.~~

(2) Existing law provides for the establishment and operation of various special districts, the composition of their governing boards, and the payment to governing board members for attending meetings and performing other duties.

This bill would require the governing boards of special districts to conduct legal and ethics orientation sessions that governing board

members would be required to attend, if they choose to receive compensation for their activities.

This bill would also specify whistle-blower protections for members or employees who make protected disclosures of improper governmental activities, as specified.

This bill would define the meetings for which compensation may be paid to members of governing boards of special districts and would limit travel expenses, as specified.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes-no~~. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 26909 of the Government Code is
2 amended to read:

3 26909. (a) The county auditor shall either make or contract
4 with a certified public accountant or public accountant to make
5 an annual audit of the accounts and records of every special
6 purpose district within the county for which an audit by a
7 certified public accountant or public accountant is not otherwise
8 provided. In each case, the minimum requirements of the audit
9 shall be prescribed by the Controller and shall conform to
10 generally accepted government auditing standards.

11 (b) Where an audit of a district's accounts and records is made
12 by a certified public accountant or public accountant, the
13 minimum requirements of the audit shall be prescribed by the
14 Controller and shall conform to generally accepted government
15 auditing standards, and a report on the audit shall be filed with
16 the Controller and with the county auditor of the county in which

1 the district is located. The report shall be filed within 12 months
2 of the end of the fiscal year or years under examination.

3 (c) Any costs incurred by the county auditor, including
4 contracts with, or employment of, certified public accountants or
5 public accountants, in making an audit of every special purpose
6 district pursuant to this section shall be borne by the district and
7 shall be a charge against any unencumbered funds of the district
8 available for the purpose.

9 (d) For joint districts lying within two or more counties, the
10 above provisions shall apply to the auditor of the county in which
11 the treasury is located.

12 (e) The county controller, or ex officio county controller, shall
13 implement this section in those counties having a county
14 controller, or ex officio county controller.

15 (f) A special district may, by unanimous request of the
16 governing board of the special district, with unanimous approval
17 of the board of supervisors, replace the annual audit with a
18 biennial audit covering a two-year period or, if the district's
19 annual budget does not exceed an amount specified by the board
20 of supervisors, an audit covering a five-year period.

21 Notwithstanding the foregoing provisions of this section to the
22 contrary, districts shall be exempt from the requirement of an
23 annual audit if the financial statements are audited by the
24 Controller to satisfy federal audit requirements.

25 (g) A board of supervisors may substitute a financial review in
26 accordance with definitions promulgated by the United States
27 Government Accountability Office for the audit of a special
28 district as required by this section, provided that all of the
29 following conditions are met:

30 (1) The board of supervisors is the governing board of the
31 district.

32 (2) The special district's revenues and expenditures are
33 transacted through the county's financial systems.

34 (3) The special district's annual revenues do not exceed one
35 hundred thousand dollars (\$100,000).

36 SEC. 2. Section 26909.5 is added to the Government Code, to
37 read:

38 26909.5. (a) (1) It is the intent of the Legislature in enacting
39 this section to promote accountability over public revenues by
40 establishing a new program to review and report on financial and

1 compliance audits of special districts. It is further the intent of
2 the Legislature that the Controller shall have the primary
3 responsibility for implementing and overseeing this program
4 through the special oversight program.

5 (2) “Auditor” as used in this section means an external audit
6 firm hired by the district to conduct its annual financial audit.

7 (b) Financial and compliance audits shall be performed in
8 accordance with generally accepted government auditing
9 standards for financial and compliance audits. The audit guide
10 prepared by the Controller shall be used in the performance of
11 these audits. The Controller shall also require that special district
12 auditors conduct testing of transactions considered high risk for
13 abuse. Both the nature and the extent of the testing and the
14 transactions to be tested shall be specifically defined in the audit
15 guide prepared by the Controller. The additional testing shall
16 occur during each district’s audit cycle’s regular financial
17 statement audit or as a separate audit within that cycle. Special
18 districts shall provide funding for all costs associated with
19 conducting the audit of high-risk transactions. An attestation
20 report on the application of agreed-upon procedures shall be
21 prepared in accordance with generally accepted government
22 auditing standards and shall specifically and separately address
23 each of the compliance requirements included in the audit guide
24 stating the auditor’s findings regarding the district’s compliance
25 with those requirements. For each compliance requirement
26 included in the audit guide, every attestation report shall further
27 state that the suggested procedures included in the audit guide for
28 that requirement ~~was~~ *were* performed, if that is the case, or, if
29 not, what other procedures were followed. If compliance
30 exceptions are identified, the audit report shall state all instances
31 of noncompliance. An auditor shall not engage in financial or
32 compliance audits unless, within three years of commencing the
33 first of the audits, and every successive three years thereafter, the
34 auditor completes a peer review in accordance with generally
35 accepted government auditing standards. To determine the
36 practicability and effectiveness of the audits and audit guide, the
37 Controller, using an appropriate sampling procedure, shall
38 determine whether audit reports are in conformance with
39 reporting provisions of *generally accepted* government auditing
40 standards and shall notify each special district and the auditor

1 regarding each determination. The special district contracting for
2 the financial and compliance audit shall include a statement that
3 provides the Controller access to audit working papers.

4 (c) (1) The Controller may perform quality control reviews of
5 audit working papers to determine whether audits are performed
6 in conformity with subdivision (b). The Controller shall
7 communicate the results of his or her reviews to the auditor, and
8 the special district for which the review was performed, and shall
9 review his or her findings with the auditor.

10 (2) Prior to the performance of any quality control reviews, the
11 Controller shall develop and publish guidelines and standards for
12 those reviews. Pursuant to the development of those guidelines
13 and standards, the Controller shall provide opportunity for public
14 comment.

15 (3) (A) Notwithstanding any other provision of this code, the
16 Controller shall conduct a quality control review of the audit
17 working papers of the auditor who performed the audits for a
18 special district if either of the following applies.

19 (i) The Controller has reason to believe that public revenues
20 were not appropriately utilized.

21 (ii) There is reason to believe that a special district report is
22 false, incomplete, or incorrect.

23 (B) If the quality control review of the Controller indicates
24 that the audit was conducted in a manner that may constitute
25 unprofessional conduct as defined pursuant to Section 5100 of
26 the Business and Professions Code, including, but not limited to,
27 gross negligence resulting in a material misstatement in the audit,
28 the Controller shall refer the case to the California Board of
29 Accountancy. If the California Board of Accountancy finds that
30 the auditor engaged in unprofessional conduct, as defined
31 pursuant to Section 5100 of the Business and Professions Code,
32 the Controller may restrict or place conditions on the ability of
33 the auditor to audit a special district for a period of *up to* three
34 years.

35 (4) The legislative body of a special district may refer an
36 auditor of a special district to the California Board of
37 Accountancy for action pursuant to paragraph (3) if an audit of a
38 special district was conducted in a manner that may constitute
39 unprofessional conduct as defined by Section 5100 of the

1 Business and Professions Code, including, but not limited to,
2 gross negligence resulting in a material misstatement in the audit.

3 (d) The Controller shall conduct any additional audits that are
4 necessary to carry out any of his or her statutory duties and
5 responsibilities. Nothing in this section shall be construed to
6 authorize any special district, or any subcontractor or
7 subrecipient, to constrain, in any manner, the Controller from
8 carrying out any additional audits. However, to the extent that the
9 required financial and compliance audits do not provide the
10 Controller with the information necessary to carry out his or her
11 responsibilities, the Controller shall plan additional audits as
12 appropriate to avoid any unnecessary duplication of audit efforts.
13 In performing these additional audits, the Controller shall, to the
14 extent deemed appropriate under the circumstances, build upon
15 the work performed during the required financial and compliance
16 audit. The Controller shall receive reimbursement from the
17 special districts for the costs of these additional audits. The
18 special district may recover the costs for the audit performed by
19 the Controller's office from the private auditing firm that
20 conducted the audit if the auditing firm is found by the California
21 Board of Accountancy to have failed to conduct a thorough and
22 complete audit.

23 ~~(e) The sum of up to six hundred thousand dollars (\$600,000)~~
24 ~~is hereby appropriated annually from the General Fund to the~~
25 ~~Controller as necessary to provide sufficient funding for one~~
26 ~~audit manager, four audit specialists, and other expenses to~~
27 ~~implement and operate the special district oversight program.~~

28 SEC. 3. Chapter 7.5 (commencing with Section 60210) is
29 added to Division 1 of Title 6 of the Government Code, to read:

30
31 CHAPTER 7.5. SPECIAL DISTRICT GOVERNING BOARDS

32
33 Article 1. General Provisions

34
35 60210. (a) "Member" as used in this chapter, means a
36 member of the governing board of a special district.

37 (b) "Special district," as used in this chapter, means an agency
38 of the state that is formed pursuant to a general or special act for
39 the local performance of governmental or proprietary functions
40 within limited boundaries and that has a governing board, all of

1 whose members are elected by registered voters or landowners
2 within the special district or whose members are appointed.
3 “Special district” excludes any special district having a
4 governing board consisting, in whole or part, of ex officio
5 members who are officers of a county, city, or another special
6 district. Special district also excludes any special district whose
7 members are appointees of those officers, other than those who
8 are appointed to serve for fixed terms. “Special district” excludes
9 the state, a county, a city, a school district, a community facilities
10 district, an air quality district or other regulatory district having
11 responsibilities related to the protection of public health. “Special
12 district” also excludes a joint powers authority consisting solely
13 of cities, counties, or one or more cities and one or more
14 counties.

15 60211. Notwithstanding any other provision of law, the
16 governing board of every special district shall comply with the
17 requirements of this chapter.

18
19 Article 2. Ethics
20

21 60215. (a) If the special district provides any type of
22 compensation, salary, stipend, or reimbursement to a member of
23 the board of directors, each member of a governing board of a
24 special district, except a member whose term of office ends
25 before January 1, 2007, serving on January 1, 2006, and each
26 designated employee shall receive training in ethical standards of
27 conduct before January 1, 2007.

28 (b) Each member of a governing board and each designated
29 employee who commences serving a special district on or after
30 January 1, 2006, shall receive training in ethical standards of
31 conduct no later than one year from the first day of service to the
32 special district. Thereafter, members of governing boards shall
33 receive training in ethical standards of conduct at least once
34 every two years if the board members choose to receive
35 compensation for their activities as board members.

36 60216. (a) A special district, at least once annually, shall
37 offer to the members of its governing board and each designated
38 employee training in ethical standards of conduct. A special
39 district may identify conferences, seminars, online or videotaped
40 training as currently available through the Attorney General’s

1 office for statewide officers, or other courses that meet the
2 requirements of this section.

3 (b) The Fair Political Practices Commission and the Attorney
4 General shall jointly develop curriculum appropriate for the
5 training in ethical standards of conduct for members of the
6 special district governing board and designated employees.

7 (c) The requirements of this article shall be met by training in
8 ethical standards of conduct and shall include information
9 regarding potential ethical abuses relating to, but not limited to,
10 all of the following matters:

11 (1) The direct and indirect business relationships among
12 members of governing boards, contractors, and vendors, and
13 between members of governing boards and officers and
14 employees of other public agencies.

15 (2) The solicitation of campaign contributions by members of
16 governing boards, officers, or employees, and the receipt of
17 contributions from bidders, contractors, or subcontractors.

18 (3) The use of special district funds for personal expenses.

19 60217. Notwithstanding Section 60215, a member of a
20 governing board who serves more than one special district shall
21 only be required to meet the requirements of this section once
22 every two years without regard to the number of special districts
23 with which he or she is affiliated. A member of a governing
24 board who meets the requirements of Section 60215 for one
25 special district shall not be required by another special district
26 with which he or she is affiliated to receive additional training in
27 ethical standards of conduct.

28 60218. A special district shall maintain records indicating the
29 dates that the members of its governing board and each
30 designated employee received training in ethical standards of
31 conduct, and the agency or entity that conducted the training.
32 Notwithstanding any other provision of law, a special district
33 shall maintain these records for at least five years after the
34 members and executive officers receive the training. A special
35 district shall make these records available to the public for
36 inspection and copying.

Article 2.5. Improper Governmental Activity

60221. Employees of special districts are afforded protections for filing complaints under subdivision (h) of Section 12940, Article 4.5 (commencing with Section 53296) of Chapter 2 of Division 2 of Title 5, and Sections 98.6, 132, 1102.5 to 1106, inclusive, and 6310 of the Labor Code. Employees shall be informed of these rights pursuant to Section 1102.8 of the Labor Code.

Article 3. Compensation and Benefits

60225. (a) Compensation for governing board members may be increased annually by a majority vote of the board enacting a referendable ordinance. The board shall vote in public session at a meeting that complies with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5) notice requirements, and a vote shall be taken each time compensation is to be increased. The increase shall be tied to the California Consumer Price Index, as determined by the Division of Labor Statistics and Research of the Department of Industrial Relations, not to exceed 5 percent per year.

(b) For purposes of this section, compensation may be paid to board members for meetings that come within the following definition:

(1) Attendance at a meeting of that special district that is conducted pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5).

(2) Representation of that special district at a public event, provided that the board of directors ~~has approved~~ *approves* the member's representation at a board meeting and that the member delivers a ~~written~~ report to the governing board regarding the member's representation at the next board meeting following the public event.

(3) Representation of that special district at a public meeting or a public hearing conducted by another public agency, including, but not limited to, a city, county, special district, school district, community redevelopment agency, joint powers agency, a regional agency, board, or commission, a state agency, board, or commission, the Legislature, or the Congress, provided

1 that the board of directors ~~has approved~~ *approves* the member's
2 representation at a board meeting and that the member delivers a
3 ~~written~~ report to the governing board regarding the member's
4 representation at the next board meeting following the public
5 meeting or public hearing.

6 (4) Participation in a program, conference, workshop, meeting
7 with district staff or seminar on a topic that is directly related to
8 the special district, including, but not limited to, training in
9 ethical standards of conduct pursuant to Article 2 (commencing
10 with Section 60215), provided that the board of directors ~~has~~
11 ~~approved~~ *approves* the member's participation at a board
12 meeting and that the member delivers a ~~written~~ report to the
13 governing board regarding the member's participation at the next
14 board meeting following the program.

15 60225.5. (a) If the principal act of a special district
16 authorizes a special district to reimburse the expenses of its
17 governing board members or employees, subject to collective
18 bargaining agreements, the special district shall follow the
19 Internal Revenue Service's accountable plan guidelines.
20 However, the amount of reimbursement may not exceed the
21 amounts permitted for state employees pursuant to Sections
22 599.615 to 599.638.1, inclusive, of Title 2 of the California Code
23 of Regulations for in-state travel. For out-of-state or international
24 travel, the reimbursement shall be based on reasonable costs
25 using state government rates as a guideline for determining a
26 reasonable amount of reimbursement. Approval of the
27 reimbursement rate shall occur during a noticed, public meeting.

28 (b) Any reconciliation of advance payments for expenses and
29 any reimbursement for expenses paid to a special district's
30 governing board members or employees shall be supported by
31 receipts and shall be approved by the board of directors in a
32 noticed, public meeting.

33 34 Article 4. Audits 35

36 60230. (a) Special districts shall cause audits to be performed
37 in compliance with Section 26909.

38 (b) In addition to the requirements of Section 26909, the
39 governing board of a special district shall do all of the following:

1 (1) Require the auditor to meet directly with the governing
2 board in an open session with the opportunity for public
3 discussion of the auditor's findings consistent with the
4 requirements of the Ralph M. Brown Act (Chapter 9
5 (commencing with Section 54950) of Part 1 of Division 2 of Title
6 5).

7 (2) Prohibit a public accounting firm from providing audit
8 services to a special district if the lead audit partner, or
9 coordinating audit partner, having primary responsibility for the
10 audit, or the audit partner responsible for reviewing the audit, has
11 performed audit services for that special district for more than the
12 six previous fiscal years, before the fiscal year being audited. If
13 the auditor-controller is performing these audits rather than a
14 public accounting firm, then the lead auditor or coordinating
15 principals performing the audit within the auditor-controller's
16 office shall also comply with these requirements. The Controller
17 may waive this requirement if he or she finds no otherwise
18 eligible auditor is available at a reasonable cost to perform the
19 audit. This requirement shall be waived if both of the following
20 occur: the district went out to bid for an audit, but no other
21 qualified auditing firm responded to the bid, and the district
22 notified the public of this action at a publicly noticed meeting.
23 ~~The 2006 calendar~~ *2006-07 fiscal* year is the base year for
24 determining whether a rotation shall be implemented.

25 (c) The Controller may audit any special district that is not in
26 compliance with the prescribed standards at the expense of the
27 special district.

28 (d) The special district may recover the costs for the audit
29 performed by the Controller's office as referenced in subdivision
30 (c) from the private auditing firm that conducted the original
31 audit if the auditing firm is found by the California Board of
32 Accountancy to have failed to conduct a thorough and complete
33 audit.

34 SEC. 4. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution for
36 certain costs that may be incurred by a local agency or school
37 district because, in that regard, this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the
39 penalty for a crime or infraction, within the meaning of Section
40 17556 of the Government Code, or changes the definition of a

1 crime within the meaning of Section 6 of Article XIII B of the
2 California Constitution.

3 However, if the Commission on State Mandates determines
4 that this act contains other costs mandated by the state,
5 reimbursement to local agencies and school districts for those
6 costs shall be made pursuant to Part 7 (commencing with Section
7 17500) of Division 4 of Title 2 of the Government Code.

O